

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT ORLANDO LOVE,

Plaintiff,

CASE NO. 1:14-CV-281

v.

HON. ROBERT J. JONKER

SHANIEKA DEVONNE MOSLEY
and DAVID SHARP,

Defendant.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 120) and Plaintiff's Objections to the Report and Recommendation. (ECF No. 121). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's Objections. After its review, the Court finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends denying Plaintiff's motion for summary judgment. (ECF No. 93). In his Objections, Plaintiff primarily reiterates and expands arguments he presented in his motion papers. The Report and Recommendation already carefully, thoroughly, and accurately addresses these arguments. Nothing in Plaintiff's Objections changes the fundamental analysis and conclusion that there remain genuine issues of material fact of whether the complained of conduct rose to the level of a federal constitutional violation. The Court agrees with the Magistrate Judge's conclusion, for the very reasons the Report and Recommendation delineate, that Plaintiff's motion for summary judgment should be denied.

The Magistrate Judge also recommends striking or denying Defendant Mosley's motion for summary judgment. (ECF No. 97). Defendants have not filed any objections. In light of the current record, and the absence of any continuing objections from Plaintiff, the Court declines to strike the documents identified in the Report and Recommendation but agrees, for the reasons recited by the Magistrate, that Defendant's motion for summary judgment should be denied.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 120) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motion for summary judgment (ECF No. 93) is **DENIED**.

IT IS FURTHER ORDERED that Defendant Mosley's motion for summary judgment (ECF No. 97) is **DENIED**.

Dated: September 18, 2017

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE